

PT 97-13

Tax Type: PROPERTY TAX

Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

FIRST UNITED METHODIST CHURCH)		
Applicant)		
)	Docket #	95-72-213
v.)		
)	Parcel Index #	18-04-453-001
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances:

David A. Koperski of Kavanagh, Scully, Sudow, White and Fredrick, P. C., attorney for the Board of Education, Peoria School District #150; Katherine S. Gorman Hubler of Prusak and Winne, Ltd., attorney for First United Methodist Church, (the "Applicant")

Synopsis:

The hearing in this matter was held at the Illinois Department of Revenue, 101 W. Jefferson, Springfield, Illinois on October 10, 1996, to determine whether or not Peoria County parcel numbered 18-04-453-001 qualified for exemption during the 1995 assessment year. C. Don Peterson, Business Administrator, was present and testified on behalf of the applicant.

The issues in this matter include first, whether the applicant was the owner of the parcel during the 1995 assessment year. The second issue is whether the applicant is a religious organization. The last issue is whether these parcels were used by the applicant for exempt purposes during the 1995 assessment year. Following the submission of all the evidence and a review of the record, it is determined that the applicant owned this parcel during the 1995 assessment year. It is also determined that the applicant is a religious organization. Finally, it is determined that the applicant leased for profit a

portion of the property in question during the 1995 assessment year and used a portion in an exempt manner during that year.

Findings of Fact:

1. The position of the Department, that Peoria County Parcel number 18-04-453-001 did not qualify for a property tax exemption for the 1995 assessment year, was established by the admission into evidence of Department Exhibit Numbers 1 and 2.

2. The property in question was obtained as part of a four-parcel acquisition by the applicant from First Financial Bank on February 28, 1994. The applicant acquired the parcel by a warranty deed. (Dept. Ex. No. 1)

3. I take judicial notice that the applicant was granted a partial property tax exemption by the Department, pursuant to docket number 95-72-212 for parcel index number 18-04-453-004. The property tax exemption for parcel index number 18-04-453-004 was filed concurrently with this application and is for an adjoining parcel. The Department granted the exemption finding that the applicant is a religious organization and used almost 85% of that parcel for religious purposes.

4. On February 28, 1994, the applicant entered into a five-year lease for the non-exempt portion of parcel index number 18-04-453-004, the adjacent parcel, with First Financial Bank for their use as banking facilities including a drive-up window. The bank pays the applicant an annual rent of \$28,560.00. (Dept. Ex. No. 2)

5. As part of the lease agreement, the applicant allows First Financial Bank the exclusive use, during normal working hours, of 21 spaces in the common parking lot. Of the 21 spaces, 11 spaces are located nearest to the banking premises. The lease defines normal working hours as 8:00 a.m. to 6:00 p.m., Monday through Friday and 8:00 a.m. to 1:00 p.m. on Saturdays. (Dept. Ex. No. 2)

6. There is some confusion about how many parking spaces are actually used by First Financial Bank on the parcel here in question. While the lease states that the bank has ten additional parking spaces that are located on the subject property, the applicant marked sixteen parking places on a diagram of the parking area that were designated for use by the bank. Apparently, the bank has the use of only five spaces near the building at this time. (Tr. pp. 24-25, 28; Dept. Ex. No. 2)¹

7. There are signs designating parking areas on the parcel that state "Reserved for Bank Customers, Mon-Fri, 9 A.M. - 5 P.M." (Dept. Ex. No. 1)

8. The applicant also leases nine designated spaces in the parking lot to Kenyon and Associates, a local architecture firm, for \$162.00 per month. The applicant inherited the leasing arrangement from First Financial Bank when they purchased the property. (Tr. pp. 32-34, 42; Dept. Ex. No. 3)

9. The property is flat, blacktopped, and contains 50 marked parking spaces as well as a maintenance shed. The maintenance shed contains a lawn mower, a snow blower, shovels, rakes, and various other equipment that is used for the upkeep of church property. (Tr. pp. 18- 21, 31-32; Applicant's Group Ex. No. 1)

10. There are 57 possible parking spaces on the property, 50 of which are currently marked and designated as such. An architect diagramed seven additional spaces that the applicant needs to "mark out." (Tr. p. 19)

1. Section 14 of the lease entitled Common Area of Use states "Tenant, its employees, servicers and customers, shall have the non-exclusive right in common with the landlord and other tenants to use all common areas and common facilities of the Premises, including, but not limited to, all approaches, entrances, exits, sidewalks, roadways, **parking areas**, landscaped areas, lighting facilities...." (emphasis added)

Section 33 of the lease entitled Parking states: "The lease permits the Tenant to have exclusive use of the Property and reasonable access to the common areas of the Premises. The Tenant, its employees and agents shall comply with such reasonable rules and regulations regarding parking as may be periodically established by the Landlord.... Specifically, the Tenant shall not be permitted to park or store vehicles, equipment, or any other materials in the established parking areas (or other common areas) of the Premises on a regular basis other than during normal business hours. Vehicles shall only be parked in designated parking spots, and the Tenant shall not be permitted to park on adjacent properties without specific authorization from the appropriate land owner...."

11. The remaining spaces on the parcel in question are used exclusively for members of the applicant for Sunday morning services, Wednesday Bible Study services, special events and youth activities. (Tr. pp. 25-26)

Conclusions of Law:

The Constitution of Illinois confers the rights for property tax exemptions in Illinois. Article IX, §6 of the Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to the Constitutional grant of authority, the Illinois Legislature has established various exemptions in the The Property Tax Code. 35 **ILCS** 200/1-1 et seq. In particular, "All property used exclusively for religious purposes, or used exclusively for school and religious purposes, or for orphanages and not leased or otherwise used with a view to profit, is exempt..." 35 **ILCS** 200/15-40

The property at issue is a parking lot. The Property Tax Code has an exemption for parking areas that are used in conjunction with an exempt entity. The provision is found at 35 **ILCS** 20/15-120 and states:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption.

Exemption statutes are to be strictly construed and the burden is on the taxpayer to prove the entitlement to the exemption. In determining whether property is to be included within the scope of the exemption, all facts and all debatable questions are to be resolved in favor of taxation. Albion Ruritan Club v. Department of Revenue, 209 Ill.App.3d 914 (1991)

The applicant submitted a warranty deed conveying the property to the applicant on February 21, 1994. I therefore find that the applicant was the owner of the parcel in question for the taxable year in question. Pursuant to

docket number 95-72-212, the Department determined that the applicant is a religious organization that qualifies for a property tax exemption, if the property at issue is used for religious purposes.

The applicant established that sixteen of the available 50 parking spaces on the property at issue were used by First Financial Bank as part of the lease arrangement that the applicant has with them. The testimony was that an additional nine spaces were leased to Kenyon and Associates for a monthly rent of \$162.00. I therefore find that the 25 parking spaces leased to First Financial Bank and Kenyon and Associates do not qualify for a property tax exemption for the 1995 assessment year.

When a tract is used for two purposes, the part used for an exempt purpose is exempt while the remainder is subject to taxation. People ex rel. Kelly v. Avery Coonley School, 12 Ill.2d 113 (1957)

I therefore find that the remaining parking spaces and the maintenance shed were used by the applicant for religious purposes and therefore qualify for a property tax exemption for the taxable year in question.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge

March 24, 1997